

DEC-04-2007 15:48

WRIGHT JUDD AND WINCKLER

702 382 4800 P.02

WALTER F. BUGDEN, JR. (480)  
TARA L. ISAACSON (7555)  
BUGDEN & ISAACSON, L.L.C.  
445 East 200 South, Suite 150  
Salt Lake City, UT 84111  
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FILED  
FIFTH DISTRICT COURT  
2007 DEC -4 PM 4:57  
WASHINGTON COUNTY

RICHARD A. WRIGHT (Nevada Bar No. 886)  
WRIGHT, JUDD & WINCKLER  
300 S. Fourth Street, Suite 701  
Las Vegas, NV 89101  
Telephone: (702)382-4004  
Facsimile: (702)382-4800

Attorneys for Defendant

IN THE FIFTH DISTRICT COURT  
WASHINGTON COUNTY, STATE OF UTAH

---

STATE OF UTAH,

Plaintiff,

vs.

WARREN STEED JEFFS,

Defendant.

---

**MOTION FOR NEW TRIAL**

Case No. 061500526

Judge James L. Shumate

---

Defendant Warren Jeffs, by and through his counsel, hereby moves this Court for a new trial pursuant to Utah Rule of Criminal Procedure Rule 24(a), in that errors and improprieties occurred during the trial which substantially effected the defendant's rights to fair trial and due process under and the Fifth and Fourteenth Amendment of the United States Constitution,

DEC-04-2007 15:48

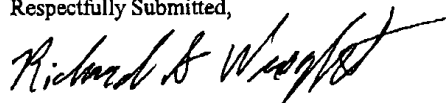
WRIGHT JUDD AND WINCKLER

702 382 4800 P.03

Article I, Sections 7, 10 and 12 of the Utah Constitution, and Utah Rule of Criminal Procedure  
Rule 18(g).

DATED this 4<sup>th</sup> day of December 2007.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Richard A. Wright", with a stylized flourish at the end.

Walter F. Bugden, Jr.  
BUGDEN & ISAACSON, L.L.C.

Richard A. Wright  
WRIGHT, JUDD & WINCKLER

Attorneys for Defendant Jeffs

DEC-04-2007 15:48

WRIGHT JUDD AND WINCKLER

702 382 4800 P.04

**CERTIFICATE OF SERVICE**

I hereby certify that, on the 4th day of December, 2007, I caused to be served a true and correct copy of the foregoing MOTION FOR NEW TRIAL by the method indicated below, and addressed to the following:

Brock R. Belnap  
Washington County Attorney  
178 North 200 East  
St. George, UT 84770

☐ HAND DELIVERY  
☒ U.S. MAIL  
☐ OVERNIGHT MAIL  
☐ FACSIMILE

Craig L. Barlow  
Assistant Attorney General  
5272 South College Drive  
Suite 200  
Murray, UT 84123

☐ HAND DELIVERY  
☒ U.S. MAIL  
☐ OVERNIGHT MAIL  
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Jeffrey J. Hunt, Esquire  
David C. Reymann, Esquire  
Parr Waddoups Brown Gee & Loveless  
185 South State Street  
Suite 1300  
Salt Lake City, UT 84111

☐ HAND DELIVERY  
☒ U.S. MAIL  
☐ OVERNIGHT MAIL  
☐ FACSIMILE

Debra K. Canoe

Jeffrey J. Hunt, Esq. (5855)  
David C. Reymann, Esq. (8495)  
**PARR WADDUPS BROWN GEE & LOVELESS**  
185 South State Street, Suite 1300  
Salt Lake City, Utah 84111  
Telephone: (801) 532-7840  
Facsimile: (801) 532-7750

2007 DEC 27 PM 2:04  
WASHINGTON COUNTY

Attorneys for Media Intervenors Associated Press,  
CNN, *Deseret Morning News*, *The Salt Lake Tribune*, *The Spectrum*, *The Daily Herald*, KSL-TV,  
KUTV 2 News, the Utah Media Coalition, and  
the Utah Headliners Chapter of the Society of  
Professional Journalists

---

IN THE FIFTH DISTRICT COURT IN AND FOR WASHINGTON COUNTY

STATE OF UTAH

---

STATE OF UTAH,

Plaintiff,

vs.

WARREN STEED JEFFS,

Defendant.

---

ASSOCIATED PRESS, CNN, DESERET  
NEWS PUBLISHING COMPANY, publisher  
of the *DESERET MORNING NEWS*, *THE  
SALT LAKE TRIBUNE*, *THE SPECTRUM*,  
*THE DAILY HERALD*, BONNEVILLE  
INTERNATIONAL CORPORATION d/b/a  
KSL-TV, FOUR POINTS MEDIA GROUP  
OF SALT LAKE CITY, INC. d/b/a KUTV 2  
NEWS, THE UTAH MEDIA COALITION,  
and THE UTAH HEADLINERS CHAPTER  
OF THE SOCIETY OF PROFESSIONAL  
JOURNALISTS,

Intervenors.

---

**MEDIA INTERVENORS'  
OBJECTION AND MOTION FOR  
ACCESS TO DEFENDANT'S  
SEALED FILING RE: MOTION  
FOR NEW TRIAL**

Criminal No. 061500526

Judge James L. Shumate

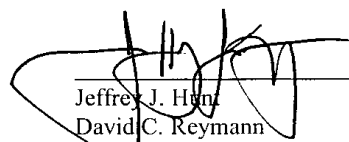
Media Intervenors the Associated Press, CNN, *Deseret Morning News*, *The Salt Lake Tribune*, *The Spectrum*, *The Daily Herald*, KSL-TV, KUTV 2 News, the Utah Media Coalition, and the Utah Headliners Chapter of the Society of Professional Journalists (collectively the “Media Intervenors”), through their undersigned counsel, object to Defendant’s filing of a sealed submission in support of his Motion for New Trial, and respectfully move the Court as follows:

1. Media Intervenors move the Court to order the immediate release of Defendant’s sealed submission, together with any other court records or submissions relating thereto that are under seal and to which the public has been denied access.
2. Alternatively, Media Intervenors request that the Court order Defendant to provide counsel for the Media Intervenors’ a copy of the sealed memorandum as well as any other sealed filings, and provide counsel for Media Intervenors an opportunity to object to closure of such memorandum and other filings.
3. In light of Defendant’s persistent refusal to provide Media Intervenors prior notice and an opportunity to contest the denial of public access to his sealed submissions before the filing of such submissions – a practice that contravenes the prior orders of this Court, Rule 4-202.04 of the *Utah Rules of Judicial Administration*, and established constitutional case law – Media Intervenors move the Court to order Defendant to cease filing court records in this case under seal without first complying with the foregoing procedural notice and hearing requirements established by law.

This Objection and Motion are supported by a Memorandum of Points and Authorities submitted herewith, together with the other pleadings and submissions on file herein.

RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of December 2007.

PARR WADDOUPS BROWN GEE & LOVELESS



Jeffrey J. Hunt  
David C. Reymann  
Attorneys for Media Intervenors

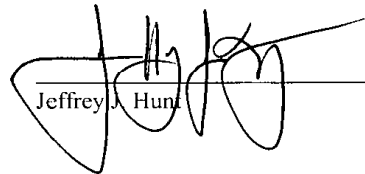
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 26<sup>th</sup> day of December 2007, a true and correct copy of the foregoing **MEDIA INTERVENORS' OBJECTION AND MOTION FOR ACCESS TO DEFENDANT'S SEALED FILING RE: MOTION FOR NEW TRIAL** was sent via United States mail, postage prepaid to:

Brock R. Belnap  
Ryan Shaum  
WASHINGTON COUNTY ATTORNEY 'S OFFICE  
178 North 200 East  
St. George, UT 84770

Richard A. Wright  
WRIGHT, JUDD & WINCKLER  
Bank of America Plaza  
300 South Fourth Street, Suite 701  
Las Vegas, Nevada 89101

Walter F. Bugden  
Tara L. Isaacson  
BUGDEN & ISAACSON, LLC  
445 East 200 South, #150  
Salt Lake City, UT 84111

  
\_\_\_\_\_  
Jeffrey J. Hunt

Jeffrey J. Hunt, Esq. (5855)  
 David C. Reymann, Esq. (8495)  
**PARR WADDOUPS BROWN GEE & LOVELESS**  
 185 South State Street, Suite 1300  
 Salt Lake City, Utah 84111  
 Telephone: (801) 532-7840  
 Facsimile: (801) 532-7750

2008 JAN -7 PM 2:02  
 WASHINGTON COUNTY  
 BY m

Attorneys for Media Intervenors Associated Press,  
 CNN, *Deseret Morning News*, *The Salt Lake Tribune*, *The Spectrum*, *The Daily Herald*, KSL-TV,  
 KUTV 2 News, the Utah Media Coalition, and  
 the Utah Headliners Chapter of the Society of  
 Professional Journalists

---

**IN THE FIFTH DISTRICT COURT IN AND FOR WASHINGTON COUNTY**

**STATE OF UTAH**

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STATE OF UTAH,

Plaintiff,

vs.

WARREN STEED JEFFS,

Defendant.

---

ASSOCIATED PRESS, CNN, DESERET  
 NEWS PUBLISHING COMPANY, publisher  
 of the *DESERET MORNING NEWS*, *THE  
 SALT LAKE TRIBUNE*, *THE SPECTRUM*,  
*THE DAILY HERALD*, BONNEVILLE  
 INTERNATIONAL CORPORATION d/b/a  
 KSL-TV, FOUR POINTS MEDIA GROUP  
 OF SALT LAKE CITY, INC. d/b/a KUTV 2  
 NEWS, THE UTAH MEDIA COALITION,  
 and THE UTAH HEADLINERS CHAPTER  
 OF THE SOCIETY OF PROFESSIONAL  
 JOURNALISTS,

Intervenors.

---

**REQUEST TO SUBMIT FOR  
 DECISION: MEDIA  
 INTERVENORS' OBJECTION  
 AND MOTION FOR ACCESS TO  
 DEFENDANT'S SEALED FILING  
 RE: MOTION FOR NEW TRIAL**

Criminal No. 061500526

Judge James L. Shumate



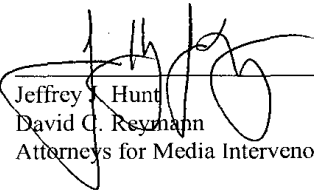
Pursuant to Rule 7(d) of the *Utah Rules of Civil Procedure*, Media Intervenors the Associated Press, CNN, *Deseret Morning News*, *The Salt Lake Tribune*, *The Spectrum*, *The Daily Herald*, KSL-TV, KUTV 2 News, the Utah Media Coalition, and the Utah Headliners Chapter of the Society of Professional Journalists (collectively the "Media Intervenors"), through their undersigned counsel, hereby request that the Media Intervenors' Objection and Motion for Access to Defendant's Sealed Filing Re: Motion for New Trial be submitted for decision. The following items have been filed with the Court pertaining to the Motion:

1. Media Intervenors' Objection and Motion for Access to Defendant's Sealed Filing Re: Motion for New Trial served December 26, 2007;
2. Memorandum in Support of Media Intervenors' Objection and Motion for Access to Defendant's Sealed Filing Re: Motion for New Trial served December 26, 2007;
3. Defendant's Response to Media Intervenors' Objection and Motion for Access to Defendant's Sealed Filing Re: Motion for New Trial served January 3, 2008; and
4. Media Intervenors' Reply Memorandum in Support of Objection and Motion for Access to Defendant's Sealed Filing Re: Motion for New Trial served January 4, 2007.

No oral argument has been requested by the parties. Accordingly, the Media Intervenors submit the matter for decision.

DATED this 41 day of January 2008.

PARR WADDOUPS BROWN GEE & LOVELESS



Jeffrey S. Hunt  
David C. Reynann  
Attorneys for Media Intervenors

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 41 day of January 2008, a true and correct copy of the foregoing **REQUEST TO SUBMIT FOR DECISION: MEDIA INTERVENORS'**

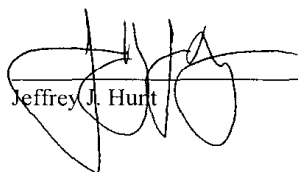
**OBJECTION AND MOTION OR ACCESS TO DEFENDANT'S SEALED FILING RE:**

**MOTION FOR NEW TRIAL** was sent via United States mail, postage prepaid to:

Brock R. Belnap  
Ryan Shaum  
WASHINGTON COUNTY ATTORNEY 'S OFFICE  
178 North 200 East  
St. George, UT 84770

Richard A. Wright  
WRIGHT, JUDD & WINCKLER  
Bank of America Plaza  
300 South Fourth Street, Suite 701  
Las Vegas, Nevada 89101


Walter F. Bugden  
Tara L. Isaacson  
BUGDEN & ISAACSON, LLC  
445 East 200 South, #150  
Salt Lake City, UT 84111

  
Jeffrey J. Hurt

WALTER F. BUGDEN, JR. (480)  
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RICHARD A. WRIGHT (Nevada Bar No. 886)  
WRIGHT, JUDD & WINCKLER  
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Las Vegas, NV 89101  
Telephone: (702)382-4004  
Facsimile: (702)382-4800

Attorneys for Defendant

BY   
2008 JAN -7 PM 2:16  
WASHINGTON COUNTY

IN THE FIFTH DISTRICT COURT

WASHINGTON COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

WARREN STEED JEFFS,

Defendant.

**DEFENDANT'S RESPONSE TO  
MEDIA INTERVENORS'  
OBJECTION AND MOTION FOR  
ACCESS TO DEFENDANT'S SEALED  
FILING RE: MOTION FOR NEW  
TRIAL**

**Case No. 061500526**

**Judge James L. Shumate**

Defendant WARREN STEED JEFFS, by and through his attorneys Walter F. Bugden, Jr.,  
Tara Issacson, BUGDEN & ISAACSON, L.L.C., and Richard A. Wright, WRIGHT, JUDD &  
WINCKLER, respond to the "Media Intervnors' Objection and Motion for Access to

Defendant's Sealed Filing Re: Motion for New Trial."

### **I. Statement of Facts**

On December 4, 2007, the defendant filed a Motion for New Trial and Notice of Filing Under Seal, which were sent on the same date, via prepaid U.S. Mail, to Jeffery J. Hunt, attorney for the media intervenors. Certificates of service were completed and attached to the two documents. Additionally, the defendant filed under seal the "Memorandum in Support of Motion for New Trial." The Notice of Filing Under Seal indicated that the memorandum was filed under seal without service on the media intervenors "pending further review by the Court." It further explained that the memorandum was sealed because it referred to matters previously sealed by this Court. On a date unknown, but soon after December 4, 2007, court personnel posted the Motion for New Trial on the internet site of the Utah State Courts, Media Center.

In their motion, the media intervenors stated that they did not receive a copy of the Motion for New Trial even though Mr. Hunt was listed on the Certificate of Service. Since the Notice of Filing Under Seal was mailed in the same envelop as the motion, the media intervenors apparently did not receive the notice either. Upon learning of the non-receipt of the mailing, the media intervenors did not contact defense counsel to request that copies be redelivered. The undersigned verified with his staff that the Notice of Filing under Seal and Motion for New Trial were, in fact, mailed by prepaid U.S. Mail to counsel for the media intervenors, as certified on December 4, 2007.

### **II. Argument**

The defendant provided proper notice of the sealed filing to the media intervenors by mailing to counsel for the media intervenors a copy of the Notice of Filing Under Seal. This notice informed the media intervenors that the Memorandum in Support of New Trial was filed

under seal since it concerned a matter previously sealed by the Court. This notice was not filed under seal and, therefore, was also made available to the public. The defense counsel are not responsible for the non-receipt of the notice via the U.S. Mail.

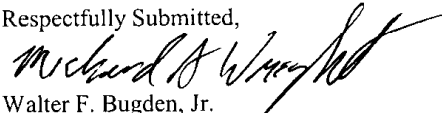
The Memorandum in Support of the New Trial discussed a matter which this Court, *sua sponte*, deemed confidential. As such, defense counsel was not at liberty to disclose memorandum to the public or media intervenor. In deference to the Court's determination, the memorandum was filed under seal.

The media intervenors appear to argue that the Order on Closure Briefing, dated June 29, 2007, required defense counsel to provide a copy of the sealed memorandum to counsel for the media intervenors. This Order only required the parties to furnish to the media intervenors copies of sealed pleadings set for hearing on July 17 and 20, 2007. The Order did not direct the service of sealed pleadings thereafter submitted to the Court.

In response the media intervenors' motion for access, the defendant asserts no privacy interest in the confidential matters discussed in the Memorandum in Support of Motion for New Trial. Accordingly, the defendant defers to this Court's discretion as to whether the memorandum should be disclosed in its entirety or in part to counsel for the media intervenors or the public.

DATED this 3d day of January 2008.

Respectfully Submitted,



Walter F. Bugden, Jr.  
BUGDEN & ISAACSON, L.L.C.  
Richard A. Wright  
WRIGHT, JUDD & WINCKLER

Attorneys for Defendant Jeffs

CERTIFICATE OF SERVICE

I hereby certify that, on the 3d day of January 2007, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Brock R. Belnap  
Washington County Attorney  
178 North 200 East  
St. George, UT 84770

☐ HAND DELIVERY  
☒ U.S. MAIL  
☐ OVERNIGHT MAIL  
☐ FACSIMILE

Craig L. Barlow  
Assistant Attorney General  
5272 South College Dr.  
Suite 200  
Murray, UT 84123


☐ HAND DELIVERY  
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Jeffrey J. Hunt, Esquire  
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Parr Waddoups Brown Gee & Loveless  
185 South State Street  
Suite 1300  
Salt Lake City, UT 84111

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☒ FACSIMILE

Debra K. Carroll

Jeffrey J. Hunt, Esq. (5855)  
 David C. Reymann, Esq. (8495)  
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 185 South State Street, Suite 1300  
 Salt Lake City, Utah 84111  
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FILED  
 2008 JAN -7 PM 2:02  
 WASHINGTON COUNTY  
 BY 

Attorneys for Media Intervenors Associated Press,  
 CNN, *Deseret Morning News*, *The Salt Lake*  
*Tribune*, *The Spectrum*, *The Daily Herald*, KSL-TV,  
 KUTV 2 News, the Utah Media Coalition, and  
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---

IN THE FIFTH DISTRICT COURT IN AND FOR WASHINGTON COUNTY

STATE OF UTAH

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Plaintiff,

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 NEWS, THE UTAH MEDIA COALITION,  
 and THE UTAH HEADLINERS CHAPTER  
 OF THE SOCIETY OF PROFESSIONAL  
 JOURNALISTS,

Intervenors.

---

**REPLY MEMORANDUM IN  
 SUPPORT OF MEDIA  
 INTERVENORS' OBJECTION  
 AND MOTION FOR ACCESS TO  
 DEFENDANT'S SEALED FILING  
 RE: MOTION FOR NEW TRIAL**

Criminal No. 061500526

Judge James L. Shumate



Media Intervenors the Associated Press, CNN, *Deseret Morning News*, *The Salt Lake Tribune*, *The Spectrum*, *The Daily Herald*, KSL-TV, KUTV 2 News, the Utah Media Coalition, and the Utah Headliners Chapter of the Society of Professional Journalists (collectively the "Media Intervenors"), through their undersigned counsel, respectfully submit this Reply Memorandum in Support of their Objection and Motion for Access to Defendant's Sealed Filing Re: Motion for New Trial.

Defendant Warren Steed Jeffs raises no objection to public release of his Memorandum in Support of Motion for New Trial. He asserts neither any privacy nor fair trial interest that would be harmed by release of the filing. Defendant's assertion that the sealed filing relates to a matter which the court previously deemed "confidential," is insufficient to overcome the strong First Amendment presumption of public access to criminal court records. *See Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 106 S. Ct. 2735 (1986); *State v. Archuleta*, 857 P.2d 234 (Utah 1993).

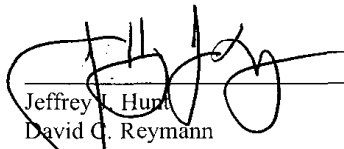
The public is entitled to know the specific grounds upon which the Defendant asserts he is entitled to a new trial. The public also is entitled to know the record upon which the Court eventually will rule upon Defendant's motion. Without access to Defendant's legal memorandum, as well as the State's opposition and all related filings, the public and the news media are left in the dark about the basis of Defendant's motion, the State's response, the record upon which the Court will rule, and the reasons supporting its ruling. The First Amendment right

of access to court records and proceedings exists precisely to safeguard the public's ability to obtain such information and to observe the work of the Court.

For these reasons, the Court should grant the Media Intervenors' Motion and provide public access to Defendant's sealed Memorandum as well as any other filings related thereto.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of January 2008.

PARR WADDOUPS BROWN GEE & LOVELESS



Jeffrey A. Hunt  
David C. Reymann  
Attorneys for Media Intervenors

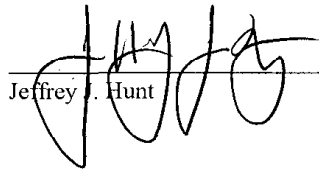
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 4<sup>th</sup> day of January 2008, a true and correct copy of the foregoing **REPLY MEMORANDUM IN SUPPORT OF MEDIA INTERVENORS' OBJECTION AND MOTION FOR ACCESS TO DEFENDANT'S SEALED FILING RE: MOTION FOR NEW TRIAL** was sent via United States mail, postage prepaid to:

Brock R. Belnap  
Ryan Shaum  
WASHINGTON COUNTY ATTORNEY 'S OFFICE  
178 North 200 East  
St. George, UT 84770

Richard A. Wright  
WRIGHT, JUDD & WINCKLER  
Bank of America Plaza  
300 South Fourth Street, Suite 701  
Las Vegas, Nevada 89101

Walter F. Bugden  
Tara L. Isaacson  
BUGDEN & ISAACSON, LLC  
445 East 200 South, #150  
Salt Lake City, UT 84111

  
\_\_\_\_\_  
Jeffrey J. Hunt

Jeffrey J. Hunt, Esq. (5855)  
 David C. Reymann, Esq. (8495)  
**PARR WADDOUPS BROWN GEE & LOVELESS**  
 185 South State Street, Suite 1300  
 Salt Lake City, Utah 84111  
 Telephone: (801) 532-7840  
 Facsimile: (801) 532-7750

2007 DEC 27 PM 2:04  
 WASHINGTON COUNTY

Attorneys for Media Intervenors Associated Press,  
 CNN, *Deseret Morning News*, *The Salt Lake*  
*Tribune*, *The Spectrum*, *The Daily Herald*, KSL-TV,  
 KUTV 2 News, the Utah Media Coalition, and  
 the Utah Headliners Chapter of the Society of  
 Professional Journalists

**IN THE FIFTH DISTRICT COURT IN AND FOR WASHINGTON COUNTY**

**STATE OF UTAH**

STATE OF UTAH,

Plaintiff,

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ASSOCIATED PRESS, CNN, DESERET  
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 NEWS, THE UTAH MEDIA COALITION,  
 and THE UTAH HEADLINERS CHAPTER  
 OF THE SOCIETY OF PROFESSIONAL  
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Intervenors.

**MEMORANDUM IN SUPPORT  
 OF MEDIA INTERVENORS'  
 OBJECTION AND MOTION FOR  
 ACCESS TO DEFENDANT'S  
 SEALED FILING RE: MOTION  
 FOR NEW TRIAL**

Criminal No. 061500526

Judge James L. Shumate

Media Intervenors the Associated Press, CNN, *Deseret Morning News*, *The Salt Lake Tribune*, *The Spectrum*, *The Daily Herald*, KSL-TV, KUTV 2 News, the Utah Media Coalition, and the Utah Headliners Chapter of the Society of Professional Journalists (collectively the "Media Intervenors"), through their undersigned counsel, respectfully submit this Memorandum in Support of Their Objection and Motion for Access to Defendant's Sealed Filing Re: Motion for New Trial.

The grounds for this Objection and Motion are as follows:

1. On or about December 4, 2007, Defendant filed a Motion for New Trial herein.

Although counsel for the Media Intervenors are listed on the certificate of service to the Motion, media counsel did not receive a copy of Defendant's Motion.

2. The Media Intervenors are advised that Defendant also filed a memorandum in support of his Motion for New Trial, but that the memorandum was submitted under seal, is not listed on the Court's docket in this case, and is not accessible to the public or the news media.

3. Counsel for the Media Intervenors have not been served or provided a copy of Defendant's sealed memorandum.

4. The Court previously entered an order permitting counsel for Media Intervenors to receive such sealed filings (on an attorneys' eyes only basis) so that counsel may ascertain whether the sealed filing is permissible under the Court's previous rulings and orders concerning

access to court filings in this case, and to challenge Defendants' penchant for sealed filings. *See* Order on Closure Briefing dated June 29, 2007.

5. Defendant's filing of this court record under seal and denying the public access to such record, without first affording the Media Intervenors notice and the opportunity to appear and contest such closure, is contrary to the constitutional principles established by the United States Supreme Court in *Press-Enterprise Co. v. Superior Court*, 478 U.S., 1, 106 S. Ct. 2735 (1986), and the Utah Supreme Court in *Society of Professional Journalists v. Bullock*, 743 P.2d 1165, 1174-75 & n. 9 (Utah 1987); *Kearns-Tribune v. Lewis*, 685 P.2d 515, 518 (Utah 1984), Rule 4-202.04 of the *Utah Rules of Judicial Administration*, and the prior rulings and orders of this Court.

6. Defendant has made no attempt to satisfy the constitutional standard for closing a presumptively public court record under *Press-Enterprise Co. v. Superior Court*, 478 U.S., 1, 106 S. Ct. 2735 (1986), *State v. Archuleta*, 857 P.2d 234 (Utah 1993), and *Kearns-Tribune v. Lewis*, 685 P.2d 515, 518 (Utah 1984).

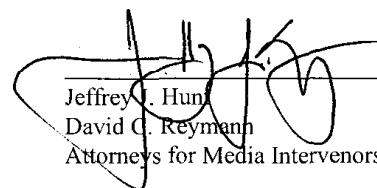
7. In light of Defendant's persistence in preemptively filing motions, memoranda and other submissions under seal in this case, without providing Media Intervenors prior notice and an opportunity to contest such closure as required by law, the Court should expressly order Defendant to cease filing court records in this case under seal without first complying with the procedural notice and hearing requirements set forth above.

8. In addition to the foregoing, the Media Intervenor's Objection and Motion is supported by the Media Intervenor's previously filed memoranda in support of motions for access to court records herein, including Memorandum in Support of Motion for Entry of Order Concerning Briefing and Hearing on Closure Motions dated June 22, 2007; Reply Memorandum in Support of Motion for Entry of Order Concerning Briefing and Hearing on Closure Motion dated June 27, 2007; Media Intervenor's Memorandum in Opposition to Defendant's Motion for Closure of Defendant's Motions in Limine and Suppression Hearings dated July 12, 2007; and Media Intervenor's Objection to Defendant's Notice of Filing Under Seal, and Motion for Access to Sealed Filing dated September 12, 2007.

For the foregoing reasons, the Media Intervenor respectfully request that the Court immediately release and make available to the public Defendant's sealed memorandum in support of Motion for New Trial and any other court records or submissions relating thereto that are under seal and to which the public has been denied access. Alternatively, the Media Intervenor request that the Court order Defendant to provide counsel for the Media Intervenor a copy of the sealed memorandum as well as any other sealed filings, and provide Media Intervenor an opportunity to object to closure of such memorandum and other filings.

RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of December 2007.

PARR WADDOUPS BROWN GEE & LOVELESS



Jeffrey C. Hunt  
David C. Reymann  
Attorneys for Media Intervenors



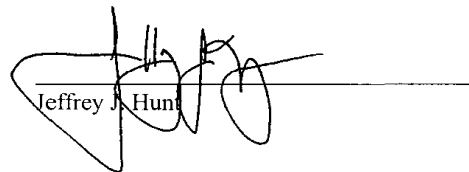
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 26<sup>th</sup> day of December 2007, a true and correct copy of the foregoing **MEDIA INTERVENORS' MEMORANDUM IN SUPPORT OF OBJECTION AND MOTION FOR ACCESS TO DEFENDANT'S SEALED FILING RE: MOTION FOR NEW TRIAL** was sent via United States mail, postage prepaid to:

Brock R. Belnap  
Ryan Shaum  
WASHINGTON COUNTY ATTORNEY 'S OFFICE  
178 North 200 East  
St. George, UT 84770

Richard A. Wright  
WRIGHT, JUDD & WINCKLER  
Bank of America Plaza  
300 South Fourth Street, Suite 701  
Las Vegas, Nevada 89101

Walter F. Bugden  
Tara L. Isaacson  
BUGDEN & ISAACSON, LLC  
445 East 200 South, #150  
Salt Lake City, UT 84111

  
Jeffrey J. Hunt

IN THE FIFTH JUDICIAL DISTRICT COURT IN AND FOR  
WASHINGTON COUNTY STATE OF UTAH  
REQUEST TO SUBMIT FORM AND/OR ORDER

FILED  
FIFTH JUDICIAL DISTRICT COURT

2008 JAN 22 AM 11:34

WASHINGTON COUNTY

TO: ☒ Judge James L. Shumate

Re: Case No. 061500526 *CPS*

☐ Judge G. Rand Beacham

Plaintiff: State

☐ Judge Eric A. Ludlow

v  
Defendant: Warren Jeffs

On the 7 day of Jan, 2008, Request to Submit was filed by:  
☐ attorney for Plaintiff  
☐ attorney for Defendant  
☒ other/prose

The following are submitted for decision:

☐ Pla's ☐ Def's Motion for Summary Judgment

☐ Pla's ☐ Def's Motion for Judgment on Pleadings

☐ Pla's ☐ Def's Motion to ☐ Dismiss ☐ Continue ☐ Compel

☐ Pla's ☐ Def's Objection to \_\_\_\_\_

☒ Pla's ☐ Def's Other Media Intervenor's Motion  
for Access

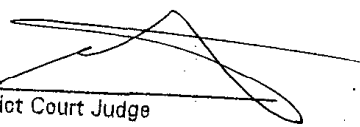
COURTS RULING:

☐ Set Hearing ☐ Approximate Length \_\_\_\_\_

Other:

Motion granted, Pleading un-sealed  
& scanned for Media and Public

Dated this 22 day of Jan, 2008.

  
District Court Judge

Brock R. Belnap #6179  
 Ryan J. Shaum # 7622  
 Craig L. Barlow # 0213  
 Washington County Attorney's Office  
 178 North 200 East  
 St. George, Utah 84770  
 (435) 634-5723

FILED  
 DISTRICT COURT  
 2008 JAN 22 AM 11:34  
 WASHINGTON COUNTY  
 BY cps

FIFTH JUDICIAL DISTRICT COURT  
 WASHINGTON COUNTY, STATE OF UTAH

STATE OF UTAH,  
 Plaintiff,

vs.

WARREN STEED JEFFS,  
 Defendant.

MEMORANDUM OPPOSING  
 MOTION FOR NEW TRIAL

[FILED UNDER SEAL]

Criminal No. 061500526

Judge James L. Shumate

The Court should deny the defendant's Motion for New Trial because the defendant's lawyers affirmatively advocated for the substitution of an alternate juror, opposed the State's motion for a mistrial, and argued against the same remedy the defendant now seeks. The defense team told the Court that replacing an excused juror during deliberations was "exactly what we want. We want this jury to decide this case." Tr. p. 22:18-19<sup>1</sup>. The defendant cannot make a strategic choice, "lead the court into error ... and then later, when he is displeased with the verdict, profit by his actions." *State v. Anderson*, 929 P.2d 1107, 1109 (Utah 1996).

<sup>1</sup> A copy of the Reporter's Transcript of Proceedings of September 25, 2007 is included as Attachment A (hereafter "Tr.").

### Statement of Facts

The defendant's lawyers encouraged the Court to do exactly what they now claim is error. After excusing Juror H, the Court outlined a plan to seat an alternate juror and asked, "Anybody got any problems with that process?" Tr. 6:21. Defense counsel responded "No, Sir" and "No." Tr. 6:22-23. After a short break to locate the alternate jurors, the State moved for a mistrial. The Court asked the defense to respond to the State's motion. Defense counsel replied:

Well, I think the response is the one you are pursuing, that is, to have excused the juror that failed to make the disclosure, made a false statement on the juror questionnaire. Now we have remedied that problem by excusing that juror. *We now can replace that juror with another juror and allow the jury to resume deliberations.* I don't believe there is any reason to leap to the conclusion that the conflict or that the conversation between [Juror S] and [Juror H] prejudiced the rest of the panel and prevents this jury from going forward reaching a fair determination based on the evidence.

Tr. 10:18-25, 11:1-3 (emphasis added). In further resisting the State's motion for a mistrial, defense counsel argued that the State was "depriving us of getting a verdict from this jury. That's what alternate jurors are for. We have four alternates." Tr. 12:17-19.

The Court took the State's motion for a mistrial under advisement and proceeded to interview the alternate jurors with input from the defense. Tr. 16:23-25, 17:1; 19:12-15. The following exchange then occurred:

The Court: ... Having seen the jurors, do you still stand on your motion for mistrial, counsel?

Mr. Belnap: Yes, Your Honor.

The Court: And you still stand in your opposition? You want to seat, well, it would be by statute, [Juror K] would be the next juror?

Mr. Bugden: *That's exactly what we want. We want this jury to decide this case....*

Tr: 22:12-19 (emphasis added).

**I. The Defendant Cannot Claim Error From A Strategy He Actively Pursued**

The Utah Supreme Court has “repeatedly” held that a “party cannot take advantage of an error committed at trial when that party led the trial court into committing the error.” *State v. Dunn*, 850 P.2d 1201, 1220 (Utah 1993). This rule applies even to alleged errors implicating the composition of the jury. *State v. Heemer*, 475 P.2d 1008, 1010 (Utah 1970); e.g. *State v. Winfield*, 2006 UT 4 ¶, 16 (“[T]he principle of refusing to sanction invited error is particularly compelling in the jury selection context.”).

In *State v. Heemer*, the defendant elected to proceed to verdict with a panel of seven jurors after an eighth juror was excused for illness.<sup>2</sup> *Heemer*, 475 P.2d. at 1009. On appeal, the defendant argued that under the Utah constitution, the composition of the jury “could not be waived even by his own agreement thereto....” *Id.* The Supreme Court rejected the argument, noting that “[w]e can see no reason in principles of law or justice to hold that a defendant can waive an entire jury but that he cannot waive a part of it, if he freely, knowingly, and voluntarily indicates to the court that such is his desire.” *Id.* at 1010. The Supreme Court further explained that “it would be difficult indeed to reconcile the position the defendant now takes with any idea of fairness.” *Id.* According to the Supreme Court:

To permit an accused to agree to proceed with seven jurors, take up the time, trouble and expense of continuing to the end of the trial; then to argue the case and submit it to a jury, for them to deliberate and arrive at a verdict, all subject to the condition that if he wins,

---

<sup>2</sup> Utah Rule of Criminal Procedure 17(f), which allows a trial to proceed with less than 8 jurors if the parties agree, did not exist at the time *Heemer* was decided.

he will go free, but if he loses he can repudiate his agreement, would allow deception and duplicity which no court of justice should be expected to countenance.

*Id.*

The doctrine that precludes a defendant from profiting from invited error applies even when the defense was mistaken as to the law rather than intentionally misleading. In *State v. Dunn*, the defendant's trial counsel moved to exclude prior bad act evidence in reliance on erroneous legal authority. *State v. Dunn*, 850 P.2d 1201, 1221 (Utah 1993). The court initially granted the motion and the defendant took the stand, thinking he was safe from cross-examination. When the State subsequently offered correct legal authority, the Court allowed cross-examination based on the prior bad acts. On appeal, the defendant argued that he would not have taken the stand if not for the trial court's original decision. According to the Utah Supreme Court, "counsel's actions in making the motion in limine without informing the trial judge of the controlling law led the trial court into error." *Id.* Consequently, the defendant was precluded from assigning error to his own actions even though his attorney was mistaken as to the law. *Id.*

In this case, the defendant affirmatively sought to replace the excused juror with an alternate. Not only did the defendant's lawyers tell this Court that they had no objection to the procedure, but they also participated in questioning the alternate jurors, resisted the State's motion for a mistrial, and encouraged the Court to substitute an alternate juror, stating "we want this jury to decide this case." Tr. 22:18-19.

The Court should respect “the trial strategies of the respective parties.” *State v. Lee*, 2006 UT 5, ¶ 19; *e.g. State v. Litherland*, 2000 UT 76, ¶ 32 (“[I]t is generally inappropriate for a trial court to interfere with counsel’s conscious choices in the jury selection process.”). In this case, the defendant’s lawyers chose to proceed with the trial and told the court that substituting an alternate juror was “exactly what we want.” Tr. 22:18.

In the *Heemer* case, where the defendant sought to set aside an adverse verdict after electing to proceed with a seven-member jury, the Utah Supreme Court stated that “the defendant was afforded what he was entitled to: a full and fair trial by a jury, with representation by competent counsel. When that is accomplished all presumptions favor the validity of the verdict and the judgment.” *State v. Heemer*, 475 P.2d 1008, 1010-1011 (Utah 1970).

In this case, the defendant similarly received a full and fair trial by jury with representation by competent counsel. In urging the court to proceed with a substitute juror, defense lawyers told the Court that they did not believe there was anything that “prevents this jury from going forward [and] reaching a fair determination based on the evidence.” Tr. 11:2-3. The defendant and his lawyers made a strategic choice that they affirmatively pursued at trial. Consequently, the defendant cannot “later, when he is displeased with the verdict, profit by his actions.” *State v. Anderson*, 929 P.2d 1107, 1109 (Utah 1996) (quotation and citation omitted). Thus, the Court should deny the defendant’s motion for a new trial.

## **II. The Court Should Not Address The Merits of the Alleged Error**

The invited error doctrine precludes a defendant from waiving an error and then planting it in the record as a form of appellate insurance. *State v. Parsons*, 781 P.2d 1275, 1284-85 (Utah

1989). It would eviscerate the invited error doctrine to permit a defendant to sow error but cure it simply by raising the issue in a post-trial motion. Consequently, the court should not re-open the case by taking evidence or reaching the merits of the alleged error. Compare e.g., *State v. Weeks*, 2000 UT App 273, ¶ 12 (“In this case, the trial court did not take evidence or hold an evidentiary hearing on the issue, but instead simply denied the Motion...and thereby did not waive the defendant’s earlier waiver...” (internal quotation marks omitted) with *State v. Beason*, 2000 UT App 109, ¶ 15 (“Because the trial court addressed the alleged error rather than finding it waived, the court granted defendant relief from his waiver and defendant’s right to assert the issue on appeal was preserved.”).

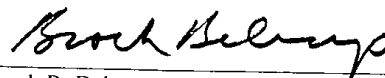
Because the defendant told the court that substituting an alternate juror was “exactly what we want,” the Court should respect trial counsels’ strategic choice, and not “waive the waiver” by considering the merits of the alleged error. Rather, the court should simply deny the motion. See *In re Estate of Covington*, 888 P.2d 675, 678 & n. 6 (Utah App. 1994) (raising issue in post-trial motion does not preserve issue for appeal where trial court did not re-open the case by taking evidence or reaching merits of the issue.).

### Conclusion

When asked if they wanted a substitute juror, the defendant’s lawyers responded, “that’s exactly what we want. We want this jury to decide this case.” Tr. 22:15-21. The defendant received a full and fair jury trial with representation by competent counsel. Therefore, “all presumptions favor the validity of the verdict and the judgment.” *State v. Heemer*, 475 P.2d 1008, 1010-1011 (Utah 1970). Thus, the Court should deny the motion for a new trial.



Respectfully submitted this 10<sup>th</sup> day of January, 2008.



Brock R. Belnap  
Washington County Attorney

#### CERTIFICATE OF DELIVERY

I hereby certify that, on the 10<sup>th</sup> day of January, 2008, I caused a true and correct copy of the foregoing MEMORANDUM OPPOSING MOTION FOR NEW TRIAL to be served as follows:

Walter F. Bugden, Jr.  
Tara L. Isaacson  
Bugden & Isaacson  
445 East 200 South, Suite 150  
Salt Lake City, UT 84111  
(via 1<sup>st</sup> Class mail)

Richard A. Wright  
Wright Judd & Winckler  
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(via 1<sup>st</sup> Class mail)

David C. Reymann, Esq.  
Jeffrey J. Hunt, Esq.  
Parr Waddoups Brown Gee & Loveless  
Attorney for Media Intervenors  
185 South State Street, Suite 1300  
Salt Lake City, Utah 84111  
(via 1<sup>st</sup> Class mail)



# Attachment A

1 IN THE FIFTH JUDICIAL DISTRICT COURT  
2 IN AND FOR WASHINGTON COUNTY, STATE OF UTAH  
3

4 STATE OF UTAH, )

5 Plaintiff, )

6 VS. )

) CASE NO. 061500526

7 WARREN STEED JEFFS. )

8 Defendant. )  
9

10 BEFORE THE HONORABLE JAMES L. SHUMATE

11 FIFTH DISTRICT COURT

12 220 NORTH 200 EAST

13 ST. GEORGE, UTAH 84770

14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 JURY TRIAL/CHANGE OF JUROR  
16

17 SEPTEMBER 25, 2007  
18

19 REPORTED BY: Russel D. Morgan  
20

21 **COPY**  
22  
23  
24  
25

1  
2 APPEARANCES

## 3 FOR THE PLAINTIFF:

4 BROCK BELNAP  
5 RYAN SHAUM  
6 WASHINGTON COUNTY ATTORNEY'S  
7 OFFICE  
8 178 NORTH 200 SOUTH  
9 ST. GEORGE, UTAH 84770

## 10 FOR THE DEFENDANT:

11 CRAIG L. BARLOW  
12 UTAH ATTORNEY GENERAL'S OFFICE  
13 DIVISION CHIEF  
14 CHILDREN'S JUSTICE DIVISION  
15 5272 COLLEGE DRIVE #200  
16 SALT LAKE CITY, UTAH 841317 WALTER F. BUGDEN, JR.  
18 TARA ISAACSON  
19 BUGDEN & ISAACSON  
20 445 EAST 200 SOUTH, SUITE 150  
21 SALT LAKE CITY, UTAH 8411122 RICHARD A. WRIGHT  
23 WRIGHT, JUDD & WINCKLER  
24 BANK OF AMERICA PLAZA  
25 300 SOUTH FOURTH STREET, SUITE 701  
LAS VEGAS, NV 89101

1 September 25, 2007. St. George, Utah.

2 \*\*REPORTER'S NOTE: INTERVIEW OF JURORS, THE FOLLOWING  
3 CONVERSATIONS WITH COUNSEL IN CHAMBERS, AND REPLACEMENT OF  
4 JUROR.

5 PROCEEDINGS

6 **THE COURT:** Let's ask Mrs. Shaw to come in, please.

7 Mrs. Shaw, thank you. Please have a seat. We are  
8 sorry to give you that one. But it's the only one I can grab  
9 quickly.

10 We are in chambers in State v. Jeffs. Mr. Jeffs is  
11 present together with his counsel. And the state's counsel  
12 are also here. And I have juror, Diedre Shaw.

13 Mrs. Shaw, I am going to read your note back to you  
14 to make sure I've got this right. It says, I quote, "I am  
15 really concerned about a personal experience of one of the  
16 jurors in here that, according to her, she did not report on  
17 her questionnaire. It involves a rape. And she told us that  
18 she didn't say it on her questionnaire because she didn't  
19 want anyone to read it if she wrote it. I was wondering what  
20 to do. I really think it affects her opinion. Please shed  
21 some light on what to do about this. Thanks, D. Shaw."

22 That's your note?

23 **MS. SHAW:** (Juror nodded head affirmatively.)

24 **THE COURT:** You are nodding your head yes, but we  
25 need it out loud. Mrs. Shaw, who is the juror who shared

1     this with you?

2           **MS. SHAW:** Andrea Harold.

3           **THE COURT:** And Mrs. Harold indicated this to you,  
4     this information. Did she indicate she was the personal  
5     victim of a rape or if some other person close to her was?

6           **MS. SHAW:** It was her, according to her. And  
7     according to her, she did not specify that on that question  
8     that was on the questionnaire.

9           **THE COURT:** Um-hmm.

10          **MS. SHAW:** That she told us, all of us, that she was  
11     afraid of who might read it. She didn't want the public  
12     knowing and getting into someone's wrong hands. And she  
13     didn't want people to know it.

14          **THE COURT:** All right. Okay. Well, I'm going to ask  
15     you to keep our conversations and the substance of your note  
16     to yourself for now. And we'll let you go back into your  
17     jury room. And we'll ask Mrs. Harold to come in. Thank you.  
18     Counsel?

19          **MR. WRIGHT:** Pardon me. Does anyone else know of  
20     your note already?

21          **MS. SHAW:** They saw me writing it. But they asked.  
22     And I said it was just a personal question.

23          **THE COURT:** Well done.

24          **MR. BELNAP:** It happened this morning?

25          **MS. SHAW:** No. It happened yesterday. We got in a

1 fight. And I walked out because I confronted her.

2 **THE COURT:** Thank you, Mrs. Shaw.

3 (Juror Shaw left chambers.)

4 **THE COURT:** Mrs. Harold, thank you. Please have a  
5 seat here. Mrs. Harold, it's come to my attention that you  
6 were not completely honest in answering your questionnaire  
7 about a previous sexual offense that you may have been  
8 subjected to earlier in your life. Was that a circumstance  
9 in your life, ma'am?

10 **MS. HAROLD:** Yes, a little bit. It's not -- it  
11 wasn't anything like a huge -- when I was 13, I was in  
12 private school. And something happened. I didn't know who  
13 was going to see that. I haven't really ever talked about it  
14 besides my parents. I talked about it with police and stuff.  
15 I don't think it changes my opinion one way or another. I  
16 don't think it -- I figured if further questions, any be  
17 asked, they could be directed towards me. I don't know who  
18 is going to see it. I don't know who is going to read it.  
19 In a room of 300 people, I don't know what I am doing there.

20 **THE COURT:** As you can tell, we only have the  
21 attorneys here. There is no press here. We are not going to  
22 disclose this information any further at this point. In  
23 fact, even if it were to be discussed, these events, by a  
24 later court, you would not be named. But I'm going to excuse  
25 you. You can go on home. Please do not discuss this with

1 the media or anyone else. I will make sure that you are not  
2 subjected to any contact by the media.

3 *MS. HAROLD:* Okay. Thank you.

4 *THE COURT:* If you wish to contact the media, you can  
5 do that yourself. I'm not going to tell you not to. But I  
6 will do absolutely everything in my power to shield you from  
7 any further exposure on this.

8 *MS. HAROLD:* Thank you.

9 *THE COURT:* If you'll give your juror tag to Colleen,  
10 she'll let you go.

11 Counsel, as we previously discussed --

12 *THE CLERK:* Just got that this morning.

13 *THE COURT:* I have directed my secretary, Mrs.  
14 Morris, to contact all four alternates. The reason is that  
15 Olivia Austin says that she's leaving town on Thursday. That  
16 being the circumstance, we may have to go back down to next  
17 in order, is Rachael Kirimi, then Lisa Crane, then Nancy  
18 Friedel. But we'll bring those alternates in beginning with  
19 Olivia Austin and probably excuse her if she does have this  
20 involvement on Thursday, unless it's something she can move.  
21 Anybody got any problems with that process?

22 *MR. WRIGHT:* No, sir.

23 *MS. ISAACSON:* No.

24 *THE COURT:* All right. We'll have security staff  
25 pick up the alternates as they come into the back parking lot



1 and escort them upstairs to be held somewhere in this  
2 building. We'll find something larger than a closet, then  
3 bring them in one at a time until we can determine who is the  
4 designated alternate. But that's all we can do. Thanks  
5 everyone. Let's go ahead off the record. Well, let's see  
6 who is here.

7 **THE CLERK:** I was able to reach everyone but Olivia.  
8 I left a message. I called everyone in person. And they are  
9 on their way.

10 **THE COURT:** Thank you. We'll use that.

11 **MR. BUGDEN:** Would it be possible for us to accompany  
12 you to wherever you are waiting to talk to our client?

13 **THE COURT:** I think they are going to need to do  
14 that, guys.

15 **MR. BUGDEN:** Your Honor, we need to get our notes if  
16 we could. So, we'll leave to get our notes, then we'll knock  
17 on the door and ask Brett to come find us or ask someone to  
18 take us to Brett.

19 **MR. WRIGHT:** Try to figure out -- at some point, the  
20 media is going to recognize there is a different person  
21 sitting there.

22 **THE COURT:** I'll have to make an announcement through  
23 my media representative to the media. And I'll just do a  
24 very quick one. An event has come up that we have had to  
25 replace one of the jurors and an alternate has been seated.

1       Probably nothing more than that.

2               **MR. BUGDEN:** Now, do they realize they are not to be  
3       deliberating right now? I wonder if you need to tell them  
4       that.

5               **THE COURT:** I better tell them that.

6               **MR. BUGDEN:** Then, eventually, you'll need to repeat  
7       the inquiry whether or not they have.

8               **THE COURT:** Oh, yeah. Then we'll have to go back  
9       into open court.

10              **MR. BUGDEN:** But I think you at least need to send a  
11      note that they can't be deliberating right now.

12              **THE COURT:** I know. I'll indicate that to them right  
13      now.

14              **MR. BELNAP:** What about the crowd out in the  
15      courtroom? Are you going to tell them to go home?

16              **THE COURT:** What's easiest for us, Rymal? Just to  
17      leave them there?

18              **THE BAILIFF:** Just to have them exit out of the  
19      courtroom.

20                      (Whereupon, a brief recess was taken.)

21              **THE COURT:** Let's go on the record. We are back in  
22      chambers on the record in State v. Jeffs. It's 9:58 on the  
23      morning of the 25th of September 2007. We have excused one  
24      juror. And we now have the four alternates remaining here in  
25      the courthouse waiting in the jury box in the courtroom. And

1 I propose we bring them in one at a time to question them  
2 about press exposure or other exposure and availability.  
3 Because I did have a note that Olivia Austin, who would be  
4 number one, may not be available, she may have something  
5 taking her out of town on Thursday. Anything else that you  
6 think we need to discuss with these jurors?

7 **MR. BELNAP:** Your Honor, there is a matter I would  
8 like to raise with the court. After reviewing the law and  
9 hearing Miss Diedre Shaw's statements regarding Andria  
10 Powers, I would like to move for a mistrial under 76-1-403.  
11 There are two subsections which the state believes call for a  
12 mistrial in this case. Subsection (3) -- under subsection  
13 (4) says, "Prejudicial conduct in or out of the courtroom not  
14 attributable to the state makes it impossible to proceed with  
15 trial without injustice to the defendant or the state."

16 And subsection (5), "False statements of a juror on  
17 voir dire prevent a fair trial."

18 Your Honor, in this case, the state believes that  
19 Ms. Powers' failure to disclose the rape at age 13 at a private  
20 school goes to circumstances which are similar and to the heart  
21 of the case. Clearly important, were listed on the  
22 questionnaire. Her participation in 13 hours of deliberation  
23 has already contaminated the jury. Miss Shaw said that she  
24 fought with Miss Powers about it. That everyone in the room  
25 knew that she was writing a note. Everyone in the room had

1 heard Miss Powers' story. If there is a conviction, the state  
2 will not have a fair trial because the supreme court will  
3 likely order reversible error based upon it. If there is an  
4 acquittal, the state will have no remedies whatsoever. That  
5 injustice to the state in this case is such that a mistrial is  
6 appropriate under the law and under the circumstances.

7 It's hard to understand how after three days of  
8 deliberations we can start afresh with one person and hope to  
9 cure what is already taken place in that jury room. It's not  
10 fair to the state. And the language of Miss Shaw's  
11 statements and Miss Powers' statements also could be cast in  
12 any future appeal as harmful to the defense whatever the  
13 outcome may be. So, on that basis, Your Honor, under  
14 76-1-403, the state respectfully requests the court to  
15 declare a mistrial.

16 **THE COURT:** Mr. Bugden, let me give you a chance to  
17 respond.

18 **MR. BUGDEN:** Well, I think the response is the one  
19 that you are pursuing, that is, to have excused the juror  
20 that failed to make the disclosure, made a false statement on  
21 the juror questionnaire. Now we have remedied that problem  
22 by excusing that juror. We now can replace that juror with  
23 another juror and allow the jury to resume their  
24 deliberations. I don't believe that there is any reason to  
25 leap to the conclusion that the conflict or that the

1 conversation between Mrs. Shaw and Mrs. Harold prejudiced the  
2 rest of the panel and prevents this jury from going forward  
3 reaching a fair determination based on the evidence.

4 **THE COURT:** Counsel, what instructions -- if we do go  
5 forward, what instructions should I give to this jury,  
6 basically, tell them to begin their deliberative process over  
7 with? Or can I at least tell them to bring the new juror up  
8 to speed however they wish to do that?

9 **MR. BUGDEN:** I asked Katy if she could find an  
10 instruction. And there normally is an instruction that would  
11 be given more than just the language that you suggested just  
12 in our conversations in chamber about bringing that juror up  
13 to speed. I think there probably is an approved instruction  
14 to explain to the jury that they now need to commence their  
15 deliberations anew, something to help the jury.

16 **THE COURT:** Let me ask my clerk. Katy, could you  
17 find anything?

18 **THE LAW CLERK:** Not that I could --

19 **THE COURT:** The problem is, there is no approved jury  
20 instruction in the state of Utah except the reasonable doubt  
21 instruction we have.

22 **MR. SHAUM:** May I bring up one thing?

23 **THE COURT:** Yes, Mr. Shaum.

24 **MR. SHAUM:** Miss Shaw said that her discussions in  
25 the jury room were so heated that she got up and left.

1           **THE COURT:** That's correct.

2           **MR. SHAUM:** So, obviously, this was not just  
3 something between the two of them, something that the others  
4 heard as well. There is no way to determine to what extent  
5 there is taint or contamination from discussions that Miss  
6 Powers was involved in. It's pretty clear from what we  
7 already know that it got to the point where Miss Powers  
8 disclosed to all of them that this was a personal experience  
9 of her's. It's impossible, I think, to cure that situation  
10 and say don't consider anything that Miss Powers had to say.

11           **THE COURT:** And you take a "but for" analysis, but  
12 for the falsity of the juror questionnaire and the hiding of  
13 that information, this would never have come into the jury  
14 room, there never would have been a problem?

15           **MR. SHAUM:** Right.

16           **THE COURT:** Mr. Wright?

17           **MR. WRIGHT:** This is a manifest necessity of  
18 depriving us of getting a verdict from this jury. That's  
19 what alternate jurors are for. We have four alternates. It  
20 would seem to me an instruction to this jury that anything  
21 they heard from the excused juror should not be considered as  
22 they commence their deliberations again with a new juror.  
23 That resolves any issue of did she bring a personal  
24 experience that wasn't in evidence, you know, into the jury  
25 room.

1           **THE COURT:** Well, it may resolve it as a matter of  
2 court's instruction. Whether or not it resolves it as a  
3 matter of fact is the state's concern.

4           Have I got that right, gentlemen?

5           **MR. BELNAP:** Yes, Your Honor. In fact, we would be  
6 left entirely without any recourse.

7           **MR. BUGDEN:** But it happens, you know, in many, many  
8 trials, that the jury hears something, then the court says  
9 I'm instructing you to disregard that. And that does not  
10 need to be a part of your deliberative process.

11          **THE COURT:** All right. Well, counsel, your motion is  
12 made for a mistrial. I'm going to take it under submission.  
13 Let's see if we even have an alternate juror available.

14          Let's ask Olivia Austin to come in first, please.

15          Miss Austin, thank you, please have a seat there. So  
16 we have a good record, again, would you state your full name.

17          **MS. AUSTIN:** Olivia Austin.

18          **THE COURT:** And what town do you live in?

19          **MS. AUSTIN:** Enoch, Utah.

20          **THE COURT:** Miss Austin, it has become necessary to  
21 replace one of the jurors that has been deliberating this  
22 case. Before we can do that, I need to ask you, could you be  
23 available for further jury deliberations, or is there some  
24 problem that's going to create for you?

25          **MS. AUSTIN:** I'm fine until Thursday morning.

1           **THE COURT:** Okay. What happens on Thursday morning?

2           **MS. AUSTIN:** I'm going to Illinois.

3           **THE COURT:** Okay. Is that a trip already paid for  
4 and ready to go?

5           **MS. AUSTIN:** Yes.

6           **THE COURT:** All right. I'm going to excuse you. We  
7 don't need you to hang around any longer. You can go back to  
8 Hurricane again. Please do not discuss this with the press  
9 at all. If anyone tries to contact you until this case is  
10 concluded, I am going to ask you that you not give any  
11 comment at all. If anyone pesters you, please let me know.

12           **MS. AUSTIN:** I'm going to let you know.

13           **THE COURT:** All right. Let's ask for Rachael Karimi  
14 next.

15           Thank you, Miss Karimi. Please have a seat there.  
16 Give you that one. We have to make the record all over  
17 again. So, would you state your full name and town where you  
18 live.

19           **MS. KARIMI:** Rachael Karimi. I live in Washington.

20           **THE COURT:** Okay. Miss Karimi, let me ask you, it  
21 has become necessary to replace one of the eight jurors that  
22 was given this case initially to deliberate. Would you have  
23 any problem in stepping in now from your own schedule? Has  
24 anything come up making it difficult for you to come in and  
25 deliberate?



1           **MS. KARIMI:** Not really. Like, whatever. I had to  
2 change my plans today. I just change my life when it comes  
3 according to.

4           **THE COURT:** But you can do that without too much  
5 discomfort or problem?

6           **MS. KARIMI:** Yes. I could make it work.

7           **THE COURT:** Since you were released last Friday, the,  
8 whatever that was, 21st, I guess, have you had any  
9 discussions with any persons regarding this case?

10          **MS. KARIMI:** No.

11          **THE COURT:** Not a one? No one come up to you and  
12 said --

13          **MS. KARIMI:** Well, I have told people I was an  
14 alternate. I said it would be interesting to see what  
15 everybody decides, that's kind of it.

16          **THE COURT:** So, you expressed yourself to other  
17 people.

18          **MS. KARIMI:** No, not like myself. Just, I think it  
19 would be interesting to see how the trial goes.

20          **THE COURT:** Have you, yourself, formed or expressed  
21 any opinion as to Mr. Jeffs' innocence or guilt?

22          **MS. KARIMI:** No.

23          **THE COURT:** Now, has anyone come and tried to talk  
24 with you about the case at all?

25          **MS. KARIMI:** No. Because I told everybody I can't

1 talk about it until I get a phone call.

2 *THE COURT:* Roughly, how many people have you had to  
3 tell you couldn't talk about it?

4 *MS. KARIMI:* Five people, maybe.

5 *THE COURT:* Okay. All right. And none of those have  
6 tried to persist?

7 *MS. KARIMI:* No. They are like, no, I understand.  
8 They are just people from church that were watching my kids  
9 for the week or calling, hey, do we need to watch your kids  
10 for you? And I'm like, no. I'm just an alternate. So, no.

11 *THE COURT:* All right. Now, have you been exposed to  
12 any press or media reports about the case at all?

13 *MS. KARIMI:* Uh-uh.

14 *THE COURT:* Not a one?

15 *MS. KARIMI:* No. Grandpa just told me it's still not  
16 decided, which I knew that because nobody had called me yet.

17 *THE COURT:* Okay. Did you have a phone call -- is it  
18 your grandfather or the kids' grandfather?

19 *MS. KARIMI:* It's my husband's grandpa. And we live  
20 on the same street. We live next door to them. So, I just  
21 went over to get my kids one day. And he said it's not over.  
22 But I knew that. So --

23 *THE COURT:* All right. Anything else for Miss  
24 Karimi?

25 *MR. WRIGHT:* No.

1           **MS. ISAACSON:** No.

2           **THE COURT:** All right. Thank you very much.

3           **MS. KARIMI:** Will they tell me where to go?

4           **THE COURT:** Yes. We'll put you in the jury room for  
5 now. Or, not in the jury room, but in the jury box.

6           Okay. Next up is Lisa Crane.

7           Miss Crane, thank you. Please have a seat. And,  
8 again, we've got to make a record. Would you state your full  
9 name and the town where you live.

10          **MS. CRANE:** Lisa Crane. Lisa A. Crane. Washington,  
11 Utah.

12          **THE COURT:** Mrs. Crane, we have had to excuse one of  
13 the jurors in this case. And it's become necessary to try to  
14 seat an alternate. Since we released you on Friday  
15 afternoon, have you had any conversations with anyone  
16 regarding this case or your role as an alternate juror?

17          **MS. CRANE:** No.

18          **THE COURT:** Okay. Has anyone attempted to talk with  
19 you about this at all?

20          **MS. CRANE:** No.

21          **THE COURT:** Been involved in any kind of conversation  
22 with friends or acquaintances, someone, a neighbor or  
23 anything like that since we have last met?

24          **MS. CRANE:** No.

25          **THE COURT:** Okay. No family members or anybody else

1     like that has even talked with you about it?

2             **MS. CRANE:** I have not talked. In fact, I have not  
3     gone back to school. I have been sitting home.

4             **THE COURT:** Okay. Haven't even gone back to your  
5     work place?

6             **MS. CRANE:** No.

7             **THE COURT:** Would you have any difficulty in stepping  
8     in now and serving? Would that interfere with something you  
9     had planned for this week at all?

10            **MS. CRANE:** No.

11            **THE COURT:** Now, have you seen or been exposed to any  
12    press or media reports about this case at all?

13            **MS. CRANE:** No.

14            **THE COURT:** Okay. Haven't seen anything on  
15    television?

16            **MS. CRANE:** I have watched television. When it comes  
17    on, I hurry and turn it.

18            **THE COURT:** Okay. Follow the court's instructions  
19    well then. Seen anything in the newspaper at all?

20            **MS. CRANE:** No.

21            **THE COURT:** Okay. I can't remember. Do you folks  
22    even take the newspaper?

23            **MS. CRANE:** I don't.

24            **THE COURT:** You don't. Haven't heard anything on the  
25    radio or anything like that?

1           **MS. CRANE:** Nope.

2           **THE COURT:** That's a negative answer. And internet,  
3 anything on the web that you may have seen or looked at?

4           **MS. CRANE:** Nope.

5           **THE COURT:** Okay. Have you, yourself, formed or  
6 expressed any opinion as to Mr. Jeffs' innocence or guilt  
7 without deliberating for the jurors?

8           **MS. CRANE:** No. It's just been going around in my  
9 mind. No.

10          **THE COURT:** Okay. Thank you. We are going to go  
11 ahead and let you go back and have a seat in the courtroom.  
12 Counsel, is there anything else anybody would like to  
13 direct?

14          **MR. BUGDEN:** No.

15          **MS. ISAACSON:** No.

16          **THE COURT:** All right. We'll let you know in just a  
17 minute. Thank you. And Nancy Friedel.

18          Miss Friedel, thank you. Am I finally pronouncing  
19 your name correctly?

20          **MS. FRIEDEL:** You are.

21          **THE COURT:** Colleen told me, and I tried to make very  
22 certain that I got it right. For the record, would you state  
23 your full name and where you live.

24          **MS. FRIEDEL:** Nancy Friedel. Do you want the  
25 address?

1           **THE COURT:** Just the town.

2           **MS. FRIEDEL:** St. George.

3           **THE COURT:** Okay. Miss Friedel, since the time of  
4 our recess and excuse of you, yourself, as an alternate juror  
5 on Friday afternoon, have you had any occasion to have any  
6 discussions with anyone regarding this case?

7           **MS. FRIEDEL:** No.

8           **THE COURT:** Okay. Have you spoken regarding this  
9 case and your services as an alternate juror with any family  
10 members at all?

11          **MS. FRIEDEL:** No.

12          **THE COURT:** Okay. Have you had occasion to have a  
13 neighbor or anyone approach you about this in that setting,  
14 anything like that?

15          **MS. FRIEDEL:** People knew I was a juror. And I told  
16 them I was an alternate. And I said that I couldn't discuss  
17 anything. But that's the extent.

18          **THE COURT:** That's as far as it went. Okay. Now,  
19 again, since that time that you were released before the jury  
20 run in to deliberate on Friday, have you seen any press  
21 reports or any coverage of the case at all?

22          **MS. FRIEDEL:** I did see headlines that they were near  
23 a verdict. That's all. I didn't see anything on the case or  
24 any opinions or anything like that.

25          **THE COURT:** Okay. You saw a headline. When did you

1 see that headline?

2 **MS. FRIEDEL:** Last night.

3 **THE COURT:** Okay. Was that a television report or a  
4 newspaper or what?

5 **MS. FRIEDEL:** It was television.

6 **THE COURT:** Okay. Have you seen any newspaper  
7 reports about the case at all?

8 **MS. FRIEDEL:** No.

9 **THE COURT:** When you saw the television article about  
10 the case, was there anything in that that other than just a  
11 verdict was near, something like that? Anything more than  
12 that?

13 **MS. FRIEDEL:** I did see on CNN on the computer that a  
14 verdict was near. What did I see? I saw something to the  
15 effect that they weren't sure about one of the verdicts.  
16 Okay.

17 **THE COURT:** All right. Miss Friedel, let me ask you,  
18 yourself, have you, since our recess on Friday, formed or  
19 expressed to any person, even to yourself, an opinion as to  
20 Mr. Jeffs' innocence or guilt?

21 **MS. FRIEDEL:** I have -- I haven't expressed to  
22 anyone. I mean, I have heard all of the evidence, so going  
23 into -- I didn't know I wasn't going to be deliberating. So,  
24 I had my initial impressions of what I would have discussed  
25 in there.

1           **THE COURT:** So, you know what you would have perhaps  
2 discussed with other jurors.

3           **MS. FRIEDEL:** I know what impressed me on the case  
4 based on what I had taken notes on. But I hadn't made any  
5 definite opinions.

6           **THE COURT:** Decisions. Okay. Thank you, ma'am.  
7 We'll let you go back out and have a seat in the courtroom.

8           All right, counsel. As I see it, we have Rachel  
9 Karimi and Lisa Crane who are still qualified to sit as  
10 alternates. I am concerned about Mrs. Friedel just because  
11 of the press impression that she's had and her discussions.  
12 Having seen the jurors, do you still on stand on your motion  
13 for mistrial, counsel?

14           **MR. BELNAP:** Yes, Your Honor.

15           **THE COURT:** And you still stand in your opposition?  
16 You want to seat, well, it would be by statute, Rachael  
17 Karimi would be the next juror?

18           **MR. BUGDEN:** That's exactly what we want. We want  
19 this jury to decide this case. And we believe you can give  
20 the jury an instruction to disregard and to begin resuming,  
21 commence their deliberations.

22           **THE COURT:** All right.

23           **MR. WRIGHT:** If we could have time to look for an  
24 instruction, let me call my office, because I think in the  
25 instruction in commencing --



1           **THE COURT:** Counsel, my instruction to the jury would  
2 be basically this. And we would see if anybody has any  
3 problems with it. First of all, your motion for mistrial is  
4 overruled and denied, counsel. We are going to proceed with  
5 the alternate juror, Rachael Karimi.

6           I'm going to inform the jurors that we have had to  
7 replace one of the jurors and that Miss Karimi will be taking  
8 that juror's place. The two remaining alternates, I will  
9 still tell to treat themselves as I have since Friday.  
10 Though, if we had to go through Lisa Crane and Nancy Friedel,  
11 then I would declare a mistrial, because we can't go to Miss  
12 Friedel. I'm not comfortable about her ability at this  
13 point. But I'm not going to put on the hard -- not tell the  
14 jury about it. I am going to tell the jury that we have had  
15 to replace one of their members, that they will have to begin  
16 their deliberations again. That they will need to freely  
17 express their opinions as instructed in Instruction No. 16.  
18 That they are to disregard any information from the excused  
19 juror. And that they are to retire and see if they can reach  
20 a verdict. Now, does anybody have any problem with that kind  
21 of direction to this jury?

22           **MR. BUGDEN:** Sounds appropriate.

23           **MS. ISAACSON:** No, sir.

24           **THE COURT:** All right. Let's go out and get you all  
25 situated in the courtroom.

1 Colleen, we'll keep the three jurors that we have in  
2 the jury box now. And we'll bring the new jury in -- the  
3 existing jurors. Yes, it is Tuesday, after a long two weeks.  
4 We'll bring the existing jurors into the courtroom also. I  
5 will come out and take the bench. We'll want to bring media  
6 in so that they understand. And all the observers. So,  
7 let's load the courtroom up now. We'll take Mr. Jeffs in  
8 now. Then bring in the observers. Then I'll take the bench.

9 **MR. WRIGHT:** Your Honor, we are keeping available  
10 Crane, Friedel, correct?

11 **THE COURT:** That's correct.

12 **MR. WRIGHT:** Once the jury's gone, you'll admonish  
13 them they are still to --

14 **THE COURT:** That's my intention, counsel.

15 **MR. WRIGHT:** Okay. Great.

16 **THE COURT:** All right. Everyone, let's go back to  
17 work.

18 (Whereupon, the following proceedings  
19 were held in open court.)

20 **THE COURT:** Thank you, ladies and gentlemen. We are  
21 back on the record in State of Utah vs. Warren Steed Jeffs.  
22 Mr. Jeffs is present with his counsel. And the state's  
23 attorneys are here. And members of the jury, as well as our  
24 three remaining alternate jurors, are available.

25 Ladies and gentlemen, members of the jury, you need to

1 understand that we have had to excuse one of your members. And  
2 I am now going to replace that member with Mrs. Karimi.

3 Mrs. Karimi, you will now be seated with this jury.

4 And my other two jurors, Mrs. Crane, Mrs. Friedel, we  
5 are going to place you under that same admonition that was  
6 earlier given to you last Friday. But we are going to  
7 release you now. And if you would like to leave, we'll let  
8 you go ahead and go right now. And we have already  
9 interfered with your day enough.

10 Now, members of the jury, because of the release of the  
11 prior jury member, it will be necessary for you to begin your  
12 deliberations anew. Your determination on how you want to  
13 proceed with that is totally up to you. However, I am going to  
14 admonish you and direct you and instruct you to completely  
15 disregard any comments, statements, positions taken by the  
16 excused juror. You are now a fresh panel, ready to go back  
17 with all eight of your opinions available for resolution of  
18 this case, consideration of the matter under the instructions  
19 given you. And let me remind you again, as I did last night,  
20 to keep open minds. Remember, you are not partisans. You are  
21 not advocates but, rather, judges in this position. And it's  
22 now your responsibility to go back and exercise that judgment.  
23 We'll release and excuse you to go back into the jury room to  
24 continue your deliberations.

25 Will all those present in the courtroom please rise.

1           **MR. BELNAP:** Your honor, you forgot to make the media  
2 inquiry.

3           **THE COURT:** Hold on just a second. Have any of you  
4 had exposure to media since we recessed last evening about  
5 8:30? Answer is in the negative.

6           No one has seen any press reports or discussed this  
7 case with anyone? Answer again is in the negative. Thank  
8 you. We'll let you go.

9           Thank you, ladies and gentlemen. We'll be in recess.  
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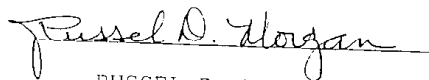
C E R T I F I C A T E

STATE OF UTAH

COUNTY OF WASHINGTON

THIS IS TO CERTIFY THAT THE FOREGOING PROCEEDINGS WERE  
TAKEN BEFORE ME, RUSSEL D. MORGAN, A CERTIFIED SHORTHAND REPORTER  
IN AND FOR THE STATE OF UTAH, RESIDING AT WASHINGTON COUNTY,  
UTAH;

THAT THE PROCEEDINGS WERE REPORTED BY ME IN STENOGRAPHY,  
AND THEREAFTER CAUSED BY ME TO BE TRANSCRIBED INTO TYPEWRITING,  
AND THAT A TRUE AND CORRECT TRANSCRIPTION OF SAID TESTIMONY SO  
TAKEN AND TRANSCRIBED TO THE BEST OF MY ABILITY IS SET FORTH IN  
THE FOREGOING PAGES NUMBERED FROM 3 TO 26 INCLUSIVE.



RUSSEL D. MORGAN, CSR

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OCTOBER 31, 2007